In the High Court of Judicature at Madras

Dated: 08/10/2003

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The Honourable Mr.Justice A.K.RAJAN

Writ Petition No.16155 of 2000

R.Rajaraman
Proprietor
M/s. Protection and
Control Electrics
Systems Private Ltd.
(Pace Systems)
Chennai.35. ..... Petitioner

-Vs-

1. The Secretary to the Government
Public Works Department
Fort St. George
Chennai.9.
2. The Secretary to Government
Highways Department
Fort St. George
Chennai.9.
3. The Managing Director
Tamilnadu Constructions
Coorporation Ltd.
Jawaharlal Nehru Salai
Jain Nagar
Arimbakkam
Chennai.
4. The Managing Director
Tamilnadu Film Development
Corporation Ltd.
Dr.M.G.R.Film City
Taramani
Chennai.113. ..... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issue of a writ of Mandamus as stated therein.

For petitioner : Mrs.Jothivani

For respondents : Mrs.G.Kavitha GA for R1&R2
M/s. Aiayr & Dolia for R3
Mr.R.Balausbramnian for R4

:O R D E R

The petitioner filed the above writ petition praying to issue a writ of Mandamus directing the respondents 3 and 4 to release payments inclusive of the security deposit amounts all aggregating to the tune of Rs.16,56,847/- (Rupees sixteen lakhs fifty six thousand eight hundred and forty seven only) to the petitioner towards the works carried out along with interest computed at 18% per annum compounded monthly, fell due as per the accepted terms of the contract to the actual dates on which the payments are made.

2. The case of the petitioner is briefly as follows:

The petitioner is a Contractor and he became successful bidder to carry out the works allotted by the third respondent; that an agreement was entered into between the petitioner and the third respondent on 27.12.1993. Accordingly the petitioner completed the works entrusted by the third respondent to him. The works were entrusted in three schedules. For the first work, entire amount was paid on 23.12.1993. In so far as the second work is concerned, a sum of Rs.7,32,106/- was due from 08.02.1994 and for the third work, a sum of Rs.4,29,741/was due from 02.07.1994. Though the work had been completed to the satisfaction of the respondents, the amounts were not paid to the petitioner and also not even the E.M.D. amount has also been repaid to the petitioner, in spite of repeated demands. Hence, this writ petition.

3. The third respondent has filed counter-affidavit stating that even though agreement was entered into between the petitioner and this respondent, the payment for all the works was made only by the fourth respondent. The fourth respondent has so far made Rs.54,00,000/ to the petitioner. This respondent is not liable for any payment to the said company/petitioner. Further the last payment was made on 21.0 6,.1994 which is more than three years ago. Therefore, the claim of the petitioner, if any, as against the respondents is barred by limitation. Further, the writ petition does not lie to enforce this relief. Only suit can be filed for this purpose. This respondent received a sum of Rs.1,32,000/-towards security deposit on E.M.D. and not as alleged by the petitioner. Even this amount also cannot be returned to the petitioner by way of interim direction since the petition itself is not maintainable in law. It is only the fourth respondent who is liable to make the payments and this respondent has nothing to do with this. The petitioner has failed to claim the amount with the period of limitation and hence, the petitioner is not entitled to recover that dues by way of writ petition. The remedy sought for is not maintainable. There is no merits in the writ petition and is liable to be dismissed.

4. No counter filed by the other respondents.

5. Heard both sides.

6. Learned counsel appearing for the petitioner has filed the typed set of papers, that is the communications sent by respondents 1 to 4 inter se copy of which has also been sent to the petitioner herein. By letter dated 14.01.1995, the third respondent sent a communication to Regional Engineer (Electrical),T.N.S.C.C. Ltd., Madrs.113 requesting to prepare the bill for item No.6 and send it to the fourth respondent for payment. Again by letter dated 22.12.1995, the Additional Secretary to Government, Public Works Department, sent a letter to the third respondent requesting him to take

immediate steps to settle the outstanding dues to the petitioner immediately. By another letter dated 14.08.1996 the third respondent has communicated the letter to the petitioner that their payment from M/s. Tamil Nadu Film Development Corporation Limited,the fourth respondent is awaited and on receipt of that the payment would be settled. Like wise in another letter dated 19.09.1996 to the Under Secretary to Government, Public Works Department, Chennai.9 the third respondent has stated as follows:
"With reference to the letter cited, it is to inform that we are taking effective steps to get our pending dues from our client M/s. Tamil Nadu Film Development Corporation Limited. Immediately on receipt of it, the amount due to M/s. Pace System, will be paid by us. This is for favour of kind information please."

Like wise, in another letter dated 05.11.1996 the third respondent has stated as follows:

" With reference to the letter cited, it is to inform that effective active is being taken to collect the pending amount from our client M/s. T.N.F.D.C.Limited. Immediately on receipt of our dues from client, we will be in position to settle the payment our sub-contractors M/s. Pace systems."

7. The third respondent wrote a letter to the petitioner on 11.01.2000 stating as follows:

"With reference to the letter cited, it is to inform that already M/s. TMFDC was advised to settle your payments vide our letter 2nd cited. As in the past, payment may be obtained from TNFDC Limited by persuing the matter with them."
8. From the above said communication it is clear that there is no dispute with respect to the amount payable to the petitioner. The respondents 3 and 4 had never disputed the amount payable. Therefore, the amount payable to the petitioner as stated in the petition is presumed to be correct. Except with respect to E.M.D., the third respondent has stated in his counter that a sum of Rs.1,32,000/-towards security deposit and E.M.D.,is payable and not the amount as alleged by the petitioner. But learned counsel appearing for the petitioner submitted that retention amount which comes 5% of the bill submitted every time and when this amount is included, it comes to Rs.16,00,000/- and odd as claimed by the petitioner.
9. From these communications it is clear that the respondents 3 and 4 are bound to pay the amount.
10. In the counter a very strange stand has been taken by the third respondent; that is apart from stating that the writ petition is not maintainable for recovery of money, the third respondent has also taken the stand that the claim of the petitioner is barred by limitation.
11. The writ petition has been filed in the year 2000 that is on 2 0.09.2000. From the communications, already referred to above, even on 11.1.2000 the third respondent has informed the petitioner that the amount would be paid to the petitioner. In spite of that, without even having any reference to the communications sent by them, the third respondent has taken a

stand that the claim is barred by limitation.
12. First of all the Government Corporation cannot plead the period of limitation due to the delay which was caused by their acts. In spite of causing the delay in payment, they have also taken the plea of limitation and on that ground they want to get away from the obligation of payment of money for the work done by the petitioner, though there was an obligation to pay the amount for the work done. This stand taken by the Government department, to use mildest of the words possible, is improper and unimaginable. The Government department to take such stand, even after extracting the work from its own citizens, it is highly improper on the part of the Government to make such statement in the counter in respect of amount due to such contractors. This Court expects that such attitude shall stop in future.
13. With respect to the other contentions that the writ petition does not lie, and only a suit lie for recovery of money, this Court is of the view that it is only enforcing the obligations; it is not a mere claim for the recovery of money. If there is any dispute with respect to quality of the work done or for any other reason, the dispute has to be settled by recording evidence which can be done by the Civil Court. Inasmuch as there is no dispute with respect to the amount payable, this Court is not prohibited from exercising its power under Article 226 of the Constitution of India. Therefore, the writ petition is maintainable and the writ petition is liable to allowed as prayed for.
14. The respondents shall settle the accounts by issuing cheques in favour of the petitioner within a period of one month i.e., on or before 10th of November, 2003, from this date; that the amount due shall be payable with interest at 9%; and the said interest amount shall be recovered from those officials who are responsible for this delay. The Government shall pay the interest amount to the petitioner and the same shall be recovered from the salari es payable to those persons who are found responsible for the delay in payment. Unless such responsibility is fastened on those officials who act in a casual manner while dealing with the public and in discharging their function, this malady can never be rectified.
In the result, the writ petition is allowed as prayed for. No costs.

Index :Yes
Internet:Yes

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